

**BEFORE THE  
COMMISSION ON LANDLORD TENANT AFFAIRS  
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Christine Perkins

Complainant

V.

Patricia Johnson

Respondent

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Case No. 31577

Rental Facility: 19606 Galway Bay Circle #203, Germantown, MD 20854 (License #55874)

**DECISION AND ORDER**

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 18<sup>th</sup> day of October 2010, found, determined, and ordered, as follows:

**BACKGROUND**

On April 7, 2010, Christine Perkins ("Complainant"), former tenant at 19606 Galway Bay Circle #203, Germantown, MD ("Property"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs ("Department"), in which she alleged that her former landlord, Patricia Johnson, owner of the Property ("Respondent"): (1) without a reasonable basis, failed to refund any portion of her \$1,400.00 security deposit plus accrued interest after the termination of her tenancy, in violation of Sections 8-203 (e)(1) and (f)(1) of the Real Property Article, Annotated Code of Maryland, 1954, 2003 Repl. Vol., 2007 Suppl. ("Real Property Article"); (2) failed to send her an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within 45 days after the termination of her tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondent has forfeited the right to withhold any portion of her security deposit plus accrued interest for damages; and (3) failed to credit her security deposit with accrued interest as required by Section 8-203(e)(1) of the Real Property Article.

The Complainant asserted that she did not damage the Property in excess of ordinary wear and tear during her tenancy and, therefore, the Respondent had no reasonable basis to withhold any portion of her security deposit plus accrued interest.

The Respondent contended that: (1) the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy; and, (2) she incurred actual expenses to repair those damages.

The Complainant is seeking an Order from the Commission for the Respondent to refund her entire \$1,400.00 security deposit plus accrued interest, in the amount of \$42.00.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on July 13, 2010, the Commission voted to hold a public hearing on September 14, 2010. The public hearing in the matter of Christine Perkins v. Patricia Johnson known as Case No. 31577 commenced on September 14, 2010, and concluded on that date.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were Christine Perkins, the Complainant, R. Julio Aleman, the Complainant's Attorney, Patricia Johnson, the Respondent, and Beatriz Yanovich, the Respondent's realtor and witness. Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence the following exhibits offered by the Respondent: (1) a series of photographs taken before the Complainant moved into the Property identified as Respondent's Exhibit Nos. 1-12; and (2) a series of photographs taken after the Complainant vacated the Property, identified as Respondent's Exhibit Nos. 13-40.

The record was left open for seven days (until September 21, 2010) in order for the Respondent to provide receipts for repairs done at the Property documenting amounts deducted from the Complainant's security deposit. The Respondent was also to provide exact dates for the photographs she presented at the hearing which depicted the condition of the Property at move-in. The Respondent failed to provide receipts for repairs done at the Property and charged against the Complainant's security deposit. The Respondent did however, provide pictures from her March 2008 MLS listings for the Property that match the pictures she presented at the hearing (Respondent's Exhibit Nos. 1-12).

### **FINDINGS OF FACT**

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On May 22, 2008, the Complainant signed a one year lease agreement ("Lease") with the Respondent for the rental of the Property, which commenced on May 22, 2008, and expired on May 31, 2009, with a monthly rent of \$1,344.00.
2. On May 22, 2008, the Complainant paid the Respondent a security deposit in the amount of \$1,400.00, which amount is properly receipted in the Lease.
3. By correspondence dated May 1, 2009, the Respondent sent the Complainant a notice to vacate the Property by June 30, 2009.

4. The Commission finds that the Complainant vacated the Property and returned the keys on July 12, 2009, having paid rent through June 30, 2009.

5. The Commission finds that the Complainant took pictures of the Property on July 4, 2009, to show the condition of the Property when she vacated (Commission's Exhibit No. 1, pp 90-100) which substantiate that the Property was in a clean condition and, with the exception of the carpet, did not indicate any damage beyond normal wear and tear.

6. The Commission finds credible the testimony of Ms. Yanovich, the Respondent's realtor, who testified that she did the walk thru inspection of the Property on July 12, 2009. During this inspection, she found that the carpeting had not been professionally cleaned per the lease agreement and the smoke detectors had been dismantled.

7. The Commission finds that, by correspondence dated July 22, 2009, the Respondent notified the Complainant that she was not returning her security deposit based on the condition in which the Property was left and attached two estimates of costs as follows:

Estimate – Replacement of Carpet and pad from The Great Indoors, Bob Okhowat	\$5,294.70
Estimate - Sterling Carter: Repair living room blind	100.00
Replace missing batteries in smoke detector	20.00
Reinstall smoke detectors	30.00
Repair stove drawer	<u>25.00</u>
TOTAL	\$175.00

8. The Commission finds credible the testimony of the Complainant that there were pre-existing stains on the carpet.

9. The Commission also finds credible the testimony of Ms. Yanovich that the Complainant had done additional damage to the carpeting during her tenancy.

10. The Commission finds credible the testimony of the Respondent that the carpeting had been damaged by the Complainant during her tenancy and that the Complainant did not have the carpeting professionally cleaned before leaving the Property as required by the lease agreement.

11. The Commission finds that no costs were incurred to repair/clean/or replace the carpeting at the Property by the Respondent.

12. The Commission finds that the Respondent did not calculate any interest on the Complainant's security deposit after the termination of her tenancy.

13. The Commission finds credible the Respondent's testimony that she sent to the Complainant, at her last known address, within 45 days after the termination of her tenancy, an itemized list of damages being claimed against her security deposit. However, this list of damages reflected estimates, not costs actually incurred to repair the itemized damage.

14. The Commission finds that the Complainant did damage the carpet in excess of ordinary wear and tear. However, the Respondent failed to produce any probative evidence that she incurred any actual costs to repair damage to the Property after the termination of the Complainant's tenancy.

15. The Commission does not consider relevant the Respondent's argument that the damaged carpet reduced the value of the Property since the Respondent failed to spend any money to correct that damage.

16. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the correct amount of simple interest which had accrued on her \$1,400.00 security deposit from the commencement of her tenancy, May 22, 2008, until the termination of her tenancy, July 12, 2009.

### **CONCLUSIONS OF LAW**

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. The Commission concludes that although the Respondent sent an itemized list to the Complainant within 45 days after the termination of her tenancy, she failed to provide any evidence of actual costs she incurred to repair anything at the Property. Section 8-203(g)(1) and (2) of the Real Property Article states:

“(1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred; and, (2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages.”

Therefore, pursuant to Section 8-203(g)(2), the Respondent has forfeited the right to withhold any portion of the Complainant's security deposit for damages.

2. The Commission concludes that the Respondent failed to credit the Complainant's security deposit with 3% simple interest which had accrued on the security deposit, in violation of Section 8-203 (e)(1) of the Real Property Article.

3. The Commission concludes that the Respondent's failure to handle and dispose of the Complainant's security deposit (\$1,400.00) plus 3% accrued interest (\$42.00) in accordance with the requirements of the applicable provisions of Section 8-203, “Security deposits” of the Real Property Article, has caused a defective tenancy.

## **ORDER**

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$1,442.00**, which sum represents the Complainant's security deposit (\$1,400.00) plus accrued interest (\$42.00).

Commissioner Nancy Cohen, Commissioner David Peller, and Commissioner Katia Cervoni, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Patricia Johnson must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4<sup>th</sup> Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Christine Perkins, in the amount of \$1,442.00.

The Respondent, Patricia Johnson, is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of Class A civil citations and civil fines of \$500.00 each, should the Commission determine that the Respondent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, she must post a bond with the Circuit Court in the amount of the award (\$1,442.00) if a stay of enforcement of this Order is sought.

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Katia Cervoni, Panel Chairperson  
Commission on Landlord-Tenant Affairs